

Neutral Citation No: [2024] NICA 62

Ref: McF12601

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 17/108557/A01

Delivered: 03/10/2024

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

REX

v

CULLEN ASBESTOS LIMITED

The applicant appeared through Mr Raymond Cullen
Mr Robin Steer KC (instructed by the Public Prosecution Service) for the Crown

Before: Keegan LCJ, McCloskey LJ and McFarland J

McFarland J (*delivering the judgment of the court*)

Introduction

[1] Cullen Asbestos Limited (“the applicant”) was incorporated as a private limited liability company on 21 January 2011 (company number NI605855). In May 2022 after a trial before His Honour Judge Kinney the applicant, then represented by solicitors and both senior and junior counsel, was convicted by a jury of three offences under the Health and Safety at Work (NI) Order 1978 relating to the removal of asbestos from a property in Orby Drive, Belfast in April 2014. Fines totalling £15,000 were imposed.

[2] By a notice of appeal dated 25 July 2022 the applicant sought leave to appeal the convictions.

[3] On 21 November 2022 Mrs Caroline Cullen, the sole shareholder and only director of the applicant died. There is no record of any transfer of her share or appointment of any new director. On 31 January 2023 the applicant was dissolved by the Registrar.

[4] A different constitution of this court (Keegan LCJ and Treacy LJ) reviewed the matter on 19 January 2024 and by an *ex-tempore* case management ruling ([2024] NICA 5), Keegan LCJ directed that the application for leave be stayed.

Mr Raymond Cullen, the widower of Mrs Caroline Cullen and an employee of the applicant, appeared before the court purporting to act for the applicant. He was directed to file proper grounds of appeal against conviction within two weeks and all relevant documentation relating to steps taken to restore the company to the Register within eight weeks.

[5] Paragraphs [9] and [10] of the ruling stated:

“[9] First, Mr Cullen must within two weeks of today file with the court his proposed grounds of appeal. Lest there is any confusion about this, the notice of appeal that has been filed of 25 July 2022 does not actually contain grounds of appeal and they must, therefore, be lodged within two weeks.

[10] Second, within eight weeks of today we require Mr Cullen to lodge with the court all relevant documentation about the steps taken to reinstate the company on the Companies Register. That should at least include the application to reinstate which is going to be filed, we are told, by William Gould Accountants, and any other subsidiary documentation. We would hope that a date for the hearing of the reinstatement will also be available within the next eight weeks.”

[6] Mr Cullen lodged a document which purported to set out grounds of appeal on 2 February 2024. He did not file the relevant documentation concerning restoration of the applicant.

[7] On 9 April 2024 Keegan LCJ reviewed the matter. Mr Cullen advised the court that he had instructed solicitors in relation to the restoration of the company. In the circumstances it was directed that the stay remain in place and that the solicitors file a letter with the court setting out the steps that were being taken to restore the company by 1 May 2024.

[8] On 7 May 2024 Keegan LCJ again reviewed the case. Mr Cullen failed to attend. The solicitors he had instructed had written to the court on 2 May 2024 to report that they had received instructions, reviewed the matter, provided advice to Mr Cullen and that in the circumstances they could not accept instructions to proceed with the application to restore the applicant. Keegan LCJ removed the stay and listed the case for hearing on 18 September 2024, with a final review on 27 June 2024. Mr Cullen was directed to have the applicant restored within a period of six weeks.

[9] Mr Cullen attended the 27 June 2024 review hearing and reported that he had submitted an application to the Registrar for the applicant to be restored. The court

has not been shown a copy of that or any other application. Keegan LCJ confirmed the hearing date of 18 September 2024 and directed skeleton arguments on behalf of the applicant by 5 September 2024 with any response from the Crown by 13 September 2024.

[10] Mr Cullen filed his skeleton argument on 4 September 2024 but did not attempt to address the fact that the applicant is a dissolved company and no longer exists as a legal entity. The Crown filed its response on 12 September 2024

[11] At the hearing on 18 September 2024 the court dealt with the existence of the applicant as a legal entity as a preliminary point. On the 18 September 2024 the applicant had still not been restored to the register although Mr Cullen did report that he believed that the appropriate paperwork had been lodged and that he had paid approximately £1,700 for outstanding fines and fees. No documentation was provided to the court. Mr Cullen stated that the restoration of the applicant was in “the final stages of completion.”

[12] The court decided to allow Mr Cullen one final chance to complete the restoration of the applicant and adjourned the case requiring him to lodge with the court by 4pm on 2 October 2024 a certificate from Companies House confirming that the applicant had been restored to the Companies Register otherwise the court would proceed to give judgment on the appeal on 3 October 2024.

[13] The Public Prosecution Service were in communication with Companies House Belfast and by an email sent by Companies House in the afternoon of 18 September 2024, after the conclusion of the hearing, it was stated:

“The company status is currently dissolved. An application to restore the company was made on 03/07/2024. However, this application was rejected as it failed to meet the requirements for administrative restoration application. No further applications have been received.”

[14] By 4pm on 2 October 2024, Mr Cullen failed to provide the certificate or any other documentary proof that the applicant has been restored to the register.

Consideration

[15] Although the application for leave to appeal was made when the company was a legal entity, it was subsequently removed from the register, and it no longer exists as a legal entity. *Mayson, French & Ryan on Company Law (37th ed)* at 20.17.1 states that “Dissolution of a company ends its legal personality.”

[16] *McPherson & Keay on The Law of Company Liquidation (5th ed)* at 17-020 states:

“Dissolution has far-reaching consequences. Its principal effect, from which all other consequences flow, is to destroy the corporate existence of the company... After dissolution no one can act on behalf of the company ... and it is unable to commence legal proceedings.”

We would add that as well as being unable to commence legal proceedings it is also unable to continue with legal proceedings that have already commenced.

[17] Hoffman LJ in *Stanhope Pension Trust Ltd & Anor v Registrar of Companies* [1994] BCLC 84 at 85E drew some parallels between a body corporate and a natural person.

“A company is a legal person whose existence is bounded by events analogous to the birth and death of a natural person ... It will come into existence by ... registration ... It will cease to exist upon ... dissolution.”

[18] The position in relation to an appeal by a natural person who dies was considered by the English Court of Appeal in *R v Jeffries* (1968) 52 Cr App R 654. The case involved an appeal against a conviction when the appellant died after the appeal was lodged but before it was heard. The deceased’s widow attempted to continue the appeal as his executor in an attempt to protect the estate of the deceased from a costs order of £1,300. Widgery LJ giving the judgment of the court at 657 stated:

“We take it to be a general principle that whenever a party to proceedings dies, the proceedings must abate, unless his personal representatives both have an interest in the subject-matter and can by virtue of the express terms of a statute (or from rules of court made by virtue of jurisdiction given by a statute) take the appropriate steps to have themselves substituted for the deceased as a party to the proceedings. Although in this case the estate would benefit if the widow were allowed to continue the appeal and were successful, there is no procedure whereby she can be substituted as an appellant, and we do not see how there can be an inherent power in the Court to allow this when the appeal is itself the creature of statute.”

[19] Section 7 of the Criminal Appeal Act 1995 inserted section 47A into the Criminal Appeal (NI) Act 1980. This now makes provision for an appeal commenced by a natural person to be continued after his or her death by a person approved by the court. There is no such provision in relation to a body corporate after it has been dissolved and loses its legal personality.

[20] The law is therefore quite clear:

- (a) After dissolution a body corporate ceases to exist.
- (b) It cannot continue with legal proceedings such as an appeal from the Crown Court against a conviction.
- (c) The Court of Appeal has no inherent power to substitute another appellant for a dissolved body corporate.
- (d) Any power of substitution must be derived from statute and there is no such statutory provision.

[21] The Companies Act 2006 provides mechanisms for the restoration of a limited liability company that has been dissolved. In the words of Hoffman LJ in *Stanhope Trustees* at 85E “Unlike a natural person, however, a company which has ceased to exist may be restored to life.” *Bailey & Groves on Corporate Insolvency: Law and Practice* (6th ed) at 20.15 states that after dissolution “until the company is restored to the register it has no legal personality.” Restoration can be achieved either under section 1024 with an administrative restoration by the Registrar or under section 1029 by a court order of restoration. Under either method, on restoration the company shall be deemed to have continued in existence as if it had not been dissolved (see sections 1028(1) and 1032(1)). In such an event this would permit the applicant to continue with its appeal.

[22] It is now over 20 months since the applicant was dissolved and eight months since this case has been actively managed by the court with Mr Cullen being advised repeatedly of the need for steps to be taken to have the applicant restored to the register before the appeal can be progressed.

[23] As the applicant ceased to exist as a legal entity on 31 January 2023 it is questionable whether Mr Cullen has had any standing before this court, but we have endeavoured to engage with him in an attempt to make progress in the appeal and for it to be dealt with expeditiously.

[24] The application for leave to appeal cannot now proceed as the applicant no longer exists as a legal entity. Mr Cullen, or any other interested party, has had sufficient time to have the applicant restored to the register but, for whatever reason, that has not happened. The application for leave was made more than two years ago and this court cannot wait indefinitely for the necessary steps to be taken to progress the matter.

[25] For the reasons given, the application for leave is therefore refused and the appeal is dismissed. We express no view as to the actual merits of the grounds of appeal as set out by Mr Cullen in his notice of appeal and skeleton argument.